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TO AMEMBASSY NAIROBI IMMEDIATE

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TAGS: SHUM, KE

SUBJECT: ANNUAL HUMAN RIGHTS REPORTS

REF: STATE 22819

FOLLOWING IS THE FINAL TEXT OF THE HUMAN RIGHTS REPORT ON
KENYA WHICH WILL BE FORWARDED TO CONGRESS JANUARY 31 AS
PART OF CONGRESSIONAL PRESENTATION DOCUMENTS FOR FY 1979
FOREIGN ASSISTANCE PACKAGE. UNLESS YOU PERCEIVE OBJECTION,
COPY SHOULD BE GIVEN TO GOK PER REFTEL.
BEGIN TEXT:

KENYA'S POLITICAL SYSTEM AND ATMOSPHERE ARE AMONG THE
MORE OPEN AND LIVELY IN AFRICA. THE KENYAN GOVERNMENT
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TAKES PRIDE IN THE FACT THAT THE FUNDAMENTAL RIGHTS AND
LIBERTIES OF ITS CITIZENS ARE ENUMERATED IN THE CONSTITU-
TION, AND IN THE EXISTENCE OF AN INDEPENDENT JUDICIARY
TO PROTECT THOSE FREEDOMS. NEVERTHELESS, THE GOVERNMENT
ALSO HAS AND SOMETIMES USES DETENTION PROVISIONS AND
OTHER RESTRICTIVE POWERS, WHICH IT STRONGLY DEFENDS AS
NECESSARY IN ORDER TO MAINTAIN LAW, ORDER AND PUBLIC

SECURITY. THESE POWERS HAVE SOMETIMES BEEN USED TO SILENCE CRITICS OF THE SENIOR LEADERSHIP.

1. RESPECT FOR THE INTEGRITY OF THE PERSON, INCLUDING FREEDOM FROM:

-- A. TORTURE

THERE IS NO INDICATION THAT TORTURE IS PRACTICED IN KENYA.

-- B. CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

THERE ARE EFFECTIVE LEGAL SAFEGUARDS AGAINST CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, ALTHOUGH PRISON CONDITIONS ARE VERY POOR.

-- C. ARBITRARY ARREST OR IMPRISONMENT

POLITICAL DETENTION IS PERMITTED UNDER THE PUBLIC SECURITY ACT. DETAINEES MUST BE INFORMED OF THE REASONS FOR THEIR DETENTION WITHIN FIVE DAYS OF ARREST, AND THEY HAVE THE RIGHT TO REVIEW OF THEIR CASES EVERY SIX MONTHS BY A SPECIAL TRIBUNAL. THE TRIBUNAL IS, HOWEVER, APPOINTED BY THE PRESIDENT, MEETS IN CAMERA, LIMITED OFFICIAL USE

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AND ITS DECISIONS ARE NON-BINDING. THE INCIDENCE OF POLITICALLY MOTIVATED ARRESTS UNDER THESE PROVISIONS SINCE INDEPENDENCE HAS BEEN LOW. RECENT CASES, HOWEVER, INCLUDE TWO PROMINENT DISSIDENT MEMBERS OF PARLIAMENT ARRESTED IN THE AFTERMATH OF THE MARCH 1975 MURDER OF A LEADING PARLIAMENTARY CRITIC OF THE REGIME, THE ARREST IN MAY 1977 OF A VOCAL PARLIAMENTARY BACKBENCHER WHO HAD ALLEGED CORRUPTION ON THE PART OF HIGH GOVERNMENT OFFICIALS, AND THE ARREST AT THE END OF 1977 OF A PROMINENT NOVELIST WHOSE WORKS STRONGLY CRITICIZED THE KENYAN ELITE. THE TOTAL NUMBER OF PERSONS THOUGHT TO BE DETAINED AT PRESENT UNDER PRESIDENTIAL ORDER IS ESTIMATED AT LESS THAN TEN.

-- D. DENIAL OF FAIR PUBLIC TRIAL

IN DETENTION CASES UNDER THE PUBLIC SECURITY ACT, THE AUTHORITY OF THE REGULAR COURTS IS LIMITED TO ENSURING COMPLIANCE WITH CERTAIN PROCEDURAL RIGHTS; THE COURTS CANNOT QUESTION THE NEED FOR THE DETENTION. THIS EXCEPTION ASIDE, THE RIGHT TO A FAIR PUBLIC TRIAL IS RESPECTED IN KENYA.

-- E. INVASION OF THE HOME

THE GENERALLY HIGH STANDARD OF IMPARTIALITY OF THE KENYAN

COURTS HAS BEEN PARALLELED BY RESPECT FOR DUE PROCESS ON THE PART OF KENYAN AUTHORITIES. AS A CONSEQUENCE, THE SANCTITY OF THE HOME AND OTHER KEY CONCEPTS OF ENGLISH COMMON LAW ARE RESPECTED IN KENYA.

2. GOVERNMENTAL POLICIES RELATING TO THE FULFILLMENT SUCH VITAL NEEDS AS FOOD, SHELTER, HEALTH CARE AND EDUCATION

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KENYA'S ECONOMIC DEVELOPMENT POLICIES, EMPHASIZING FREE ENTERPRISE AND THE PROFIT MOTIVE, HAVE PRODUCED A RECORD OF ECONOMIC GROWTH THAT IS UNUSUALLY GOOD FOR AFRICA. THE GOVERNMENT HAS DEVELOPED A NUMBER OF POLICIES RESPONDING DIRECTLY TO THE FUNDAMENTAL NEEDS OF THE POORER SEGMENTS OF THE POPULATION. THESE PROGRAMS INCLUDE BOTH REGULATORY MEASURES SUCH AS CONTROLS ON THE PRICE OF BASIC FOODSTUFFS AND DEVELOPMENT PROGRAMS AIMED AT EMPLOYMENT GENERATION IN THE URBAN AREAS AND IMPROVEMENT OF CONDITIONS FOR SMALLHOLDERS IN THE RURAL AREAS. HEALTH CARE AND EDUCATION ARE ALSO PRIORITY AREAS FOR GOVERNMENT DEVELOPMENT SPENDING. THESE POLICIES NOTWITHSTANDING, HOWEVER, MAJOR GAPS EXIST BETWEEN THE HAVES AND THE HAVE NOTS IN KENYA.

HIGH-LEVEL CORRUPTION IS A PROBLEM IN KENYA. IT IS NOT CLEAR, HOWEVER, TO WHAT EXTENT CORRUPTION HAS ACTUALLY DIVERTED RESOURCES AWAY FROM USES WHICH WOULD RAISE THE OVERALL STANDARD OF LIVING AND BENEFIT THE POOR MAJORITY.

3. RESPECT FOR CIVIL AND POLITICAL LIBERTIES, INCLUDING:

-- A. FREEDOM OF THOUGHT, SPEECH, PRESS, RELIGION AND ASSEMBLY

FREEDOM OF EXPRESSION AND COMMUNICATION IN KENYA CAN BE RESTRICTED UNDER VARIOUS SECTIONS OF THE PENAL CODE. THE EXISTENCE AND OCCASIONAL USE OF THE DETENTION LAWS EXERTS AN INHIBITING INFLUENCE ON PUBLIC EXCHANGE OF VIEWS ON SENSITIVE POLITICAL TOPICS. THE GOVERNMENT OPENLY DISCOURAGES STUDENT POLITICAL ACTIVISM, WHICH IN 1975 RESULTED IN THE TEMPORARY CLOSURE OF THE UNIVERSITY OF LIMITED OFFICIAL USE

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NAIROBI. ALTHOUGH THERE IS NO FORMAL CENSORSHIP OF NEWS COPY, GOVERNMENT GUIDELINES ARE ISSUED ON POLITICALLY SENSITIVE ISSUES AND ARE USUALLY OBSERVED BY THE MEDIA. THERE IS ALSO A DEGREE OF SELF-CENSORSHIP. HOWEVER, KENYA'S PRESS IS ACTIVE AND ASSERTIVE IN REPORTING AND COMMENTING ON INTERNAL DEVELOPMENTS.

FREEDOMS OF ASSEMBLY AND ASSOCIATION ARE LIMITED BY THE PUBLIC ORDER AND POLICE ACT WHICH GIVES LOCAL ADMINISTRATIVE AUTHORITIES AND POLICE WIDE POWERS TO CONTROL PUBLIC MEETINGS. IT IS AN OFFENSE NOT ONLY TO CONVENE AN UNLICENSED MEETING, BUT ALSO TO ATTEND ONE. WITH THESE POWERS, THE GOVERNMENT CAN PREVENT MEETINGS BY POLITICAL OPPONENTS; THE ACT HAS BEEN USED IN A FEW CASES. SIMILARLY, UNDER THE SOCIETIES ACT THE GOVERNMENT CAN REFUSE TO REGISTER ANY SOCIETY THAT IT BELIEVES MAY PURSUE ACTIVITIES HARMFUL TO PUBLIC SECURITY. ONE OPPOSITION POLITICAL PARTY REMAINS PROSCRIBED UNDER THIS ACT, AND THE GOVERNMENT USED THE SAME POWERS TO BAN THE JEHOVAH'S WITNESSES IN 1973; IN THE LATTER CASE, HOWEVER, THE GOVERNMENT LATER REVOKED THE BAN WHEN THREATENED WITH A COURT TEST OF ITS CONSTITUTIONALITY.

KENYA'S TRADE UNION MOVEMENT IS ACTIVE AND VOCIFEROUS.

THERE IS FULL FREEDOM OF RELIGION IN KENYA.

-- B. FREEDOM OF MOVEMENT WITHIN THE COUNTRY,
FOREIGN TRAVEL AND EMIGRATION

UNDER THE PRESIDENTIAL DETENTION POWER, INDIVIDUALS MAY BE RESTRICTED IN THEIR MOVEMENTS WITHIN THE COUNTRY. FOREIGN TRAVEL AND EMIGRATION ARE NOT RESTRICTED.

-- C. FREEDOM TO PARTICIPATE IN THE POLITICAL PROCESS
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KENYA HAS A ONE-PARTY SYSTEM, AND THE GOVERNMENT HAS SUBSTANTIAL POWERS TO RESTRICT POLITICAL ACTIVITY, AS SET FORTH IN 3A ABOVE. AT THE SAME TIME, POLITICAL ACTIVITY WITHIN THIS FRAMEWORK IS OPEN TO VIRTUALLY ALL KENYANS AND IS VIGOROUS. PARLIAMENTARY ELECTIONS IN 1969 AND 1974 FEATURED MANY LIVELY CONTESTS BETWEEN

MULTIPLE CANDIDATES AND RESULTED IN THE DEFEAT OF A
NUMBER OF INCUMBENTS.

4. GOVERNMENT ATTITUDE AND RECORD REGARDING INTER-
NATIONAL AND NON-GOVERNMENTAL INVESTIGATION OF
ALLEGED VIOLATIONS OF HUMAN RIGHTS

THE KENYAN GOVERNMENT HAS IN THE PAST BARRED ENTRY
INTO KENYA BY CERTAIN JOURNALISTS WHO HAVE BEEN
CRITICAL OF PRESIDENT KENYATTA AND HIS FAMILY.
HOWEVER, WE KNOW OF NO INSTANCES OF REQUESTS FOR
INFORMATION FROM THE MAJOR HUMAN RIGHTS ORGANIZATIONS

THAT HAVE BEEN REFUSED BY THE KENYAN GOVERNMENT.
REQUESTS FOR ENTRY BY OUTSIDE GROUPS TO INVESTIGATE
HUMAN RIGHTS CONDITIONS WOULD PRESUMABLY BE SUBJECT
TO CLOSE SCRUTINY, PARTICULARLY REQUESTS FOR ENTRY
FOR THE EXPRESS PURPOSE OF INVESTIGATING THE DETEN-
TION SYSTEM AND OTHER ASPECTS OF THE GOVERNMENT'S
SECURITY POWERS. END TEXT. VANCE

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